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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 HELEN L. HORVATH, dba HW ASSOC.,

11 Plaintiff,

12 vs.

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14 ANTHONY TONEY, dba UPTOP GROUP
15 LLC, CAVA CUP SOCCER
TOURNAMENT, AMERICAS
16 BASKETBALL INTERNATIONAL, and dba
ABI SLAM FOUNDATION,

17 Defendants.

CASE NO. 11-cv-1880 – IEG (BLM)

ORDER:

(1) SCREENING FIRST AMENDED
COMPLAINT PURSUANT TO 28
U.S.C. § 1915(e)(2); and

(2) DIRECTING U.S. MARSHAL
SERVICE PURSUANT TO 28 U.S.C.
§ 1915(d) and Fed. R. Civ. P. 4(c)(3).

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19 On August 19, 2011, Plaintiff Helen L. Horvath, proceeding *pro se*, filed a complaint
20 asserting claims stemming from an alleged breach of contract by Defendant Anthony Toney.
21 [Doc. No. 1.] Plaintiff sought leave to proceed *in forma pauperis* (“IFP”) and appointment of
22 counsel. [Doc. Nos. 2 & 3.] On August 29, 2011, the Court granted Plaintiff IFP status, but *sua*
23 *sponte* dismissed the complaint for failure to state a claim pursuant to 28 U.S.C. §
24 1915(e)(2)(B)(ii). [Doc. No. 4.] The Court also denied as moot Plaintiff’s motion for appointment
25 of counsel. [Id.] On October 5, 2011, Plaintiff filed her First Amended Complaint (“FAC”).
26 [Doc. No. 6.] The Court now proceeds to *sua sponte* screen the FAC as required by 28 U.S.C. §
27 1915(e)(2)(B).
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DISCUSSION

I. *Sua sponte* screening

3 Pursuant to 28 U.S.C. § 1915(e)(2)(B), notwithstanding any filing fee, the Court must
4 dismiss any complaint if at any time the Court determines that it is “frivolous or malicious,” “fails
5 to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant
6 who is immune from such relief.” The *sua sponte* screening is mandatory. *See Lopez v. Smith*,
7 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“It is . . . clear that section 1915(e) not only
8 permits but requires a district court to dismiss an in forma pauperis complaint that fails to state a
9 claim.”); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam) (“[T]he
10 provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.” (citation omitted)).

11 In *sua sponte* dismissing Plaintiff's original complaint, the Court concluded that the
12 allegations were insufficient to support any of the federal claims listed in the complaint or to
13 establish subject matter jurisdiction based on diversity of citizenship. The Court, however, gave
14 Plaintiff leave to amend her complaint to cure the deficiencies. In her FAC, Plaintiff alleges that
15 she resides in California and that Defendant resides in Alabama. (FAC at 2.) She further alleges
16 that Defendant's breach of contract injured her in the amount of \$211,415.15. (*Id.* at 8.) Having
17 reviewed these and other allegations in the FAC, the Court is satisfied that the FAC adequately
18 alleges subject matter jurisdiction based on diversity of citizenship. *See* 28 U.S.C. § 1332(a); *see*
19 *also Matheson v. Progressive Specialty Inc. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam)
20 ("Jurisdiction founded on 28 U.S.C. § 1332 requires that the parties be in complete diversity and
21 the amount in controversy exceed \$75,000.").

II. U.S. Marshal service

23 Because the Court granted Plaintiff IFP status, Plaintiff is entitled to U.S. Marshal service
24 on her behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all
25 process, and perform all duties in [*in forma pauperis*] cases.”); *see also* Fed. R. Civ. P. 4(c)(3).
26 Plaintiff is cautioned, however, that “the *sua sponte* screening and dismissal procedure is
27 cumulative of, not a substitute for, any subsequent Rule 12(b)(6) motion that the defendant may
28 choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

CONCLUSION

2 For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Fee Waiver for
3 Service of Summons by U.S. Marshal, [Doc. No. 10], and **ORDERS** as follows:

4 (1) The Clerk of Court shall issue summons as to Plaintiff's First Amended Complaint
5 [Doc. No. 6], as corrected on October 26, 2011, [Doc. No. 12], upon Defendants and shall forward
6 it to Plaintiff along with a blank U.S. Marshal Form 285. In addition, the Clerk shall provide
7 Plaintiff with a certified copy of this Order and a certified copy of her First Amended Complaint
8 and the summons for purposes of serving Defendants. Upon receipt of this "IFP Package,"
9 Plaintiff is directed to complete the Form 285 as completely and accurately as possible, and to
10 return it to the U.S. Marshal according to the instructions provided by the Clerk in the letter
11 accompanying her IFP Package. Thereafter, the U.S. Marshal shall serve a copy of the First
12 Amended Complaint and summons upon Defendants as directed by Plaintiff on the Form 285s.
13 All costs of service shall be advanced by the United States.

14 (2) Defendants are thereafter ORDERED to reply to Plaintiff's First Amended
15 Complaint within the applicable time under Federal Rule of Civil Procedure 12(a).

16 (3) Plaintiff shall serve upon Defendants or, if appearance has been entered by
17 counsel, upon Defendants' counsel, a copy of every further pleading or other document
18 submitted for consideration of the Court. Plaintiff shall include with the original paper to
19 be filed with the Clerk of the Court a certificate stating the manner in which a true and
20 correct copy of any document was served on Defendants, or counsel for Defendants, and
21 the date of service. Any paper received by the Court which has not been filed with the
22 Clerk or which fails to include a Certificate of Service will be disregarded.

IT IS SO ORDERED.

25 || Dated: November 1, 2011

Dina E. Gonzales

**IRMA E. GONZALEZ, Chief Judge
United States District Court**